

FREQUENTLY ASKED QUESTION # 17: When should I controvert Continuation of Pay (COP) and challenge a claim?



“CONTROVERTING” COP VERSUS “CHALLENGING” CLAIMS:

Two terms are used to describe the processes by which a supervisor contests claims submitted to the Office of Workers' Compensation Programs (OWCP). Depending on the circumstances, you may “controvert” the payment of COP and/or “challenge” the validity of the claim.

When is it appropriate to “controvert” COP?

Your agency can refuse to pay COP, if the following situations arise:

- The disability was not caused by a traumatic injury.
- The employee is not a citizen of the United States or Canada.
- No written claim (CA-1) was filed within 30 days from the date of injury.
- The injury was not reported until after employment has been terminated.
- The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties.
- The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs.
- Work did not stop until more than 45 days following the injury.

For more information on COP, [See FAQ #15](#)

You are required to administratively “controvert” COP through the claim process. You will attach factual evidence supporting your reason for denying the COP. The OWCP will make the final decision regarding your agency's obligation to pay the COP. If your decision to withhold COP was incorrectly made, you will be required to reinstate the COP to the employee.

Conversely, there will be situations that arise, in which you cannot refuse the initial payment of COP, despite circumstances that you believe are questionable. You must authorize the COP (if supported by appropriate medical documentation), and then controvert the COP and/or challenge to the validity of the claim. If you are successful in contesting either, your employee will be required to change the COP back to annual leave, sick leave, or leave without pay (LWOP).

When is it appropriate to “challenge” a claim?

The “Five Elements of Review” that must be considered by the OWCP Claim Examiner, to determine the validity of a claim are:

- The employee is a civil service employee as defined in the Code of Federal Regulations;
- The employee filed the claim timely;
 - For COP entitlement, the claim was filed within 30 days of the injury;
 - For other benefits, the claim was filed within three years, unless the immediate supervisor had actual knowledge of the injury within 30 days of the occurrence.
- Fact of Injury
 - Factual – The employee provides evidence that the injury occurred.
 - Medical – The employee provides medical evidence that the injured occurred from a “qualified” physician.
- Performance of Duty: The employee provides evidence that what they were doing at the time of injury was related to his or her employment.
- Causal Relationship: The employee provides medical evidence that the medical condition or disability was caused by or is related to his or her federal employment.

If you have any factual evidence that contradicts the above criteria, you must officially challenge the claim. The ARC Workers' Compensation Specialist will assist you in developing this documentation. Examples of factual evidence, which could be used (either to support or contest a claim) include, but are not limited to: witness statements, training records, position descriptions, accident investigations, agency directives and/or procedures, maps and/or photographs, police reports, etc.

You should be open with your employee when you challenge his claim. Notify him or her that you plan to challenge the claim and provide him or her with the your reasons. As previously stated, this is a non-adversarial situation. Simply explain to the employee that you are bound by the Federal Employees' Compensation Act (FECA) regulations to provide the evidence you have. The OWCP will make the final determination. If OWCP denies a claim, or denies specific benefits to a claim, it will provide a written notice to the employee instructing him on his appeal rights. The agency does not have the right to appeal the acceptance of a claim. For this reason, **it is critical to provide all appropriate evidence when a claim is initially filed and to respond immediately to any subsequent inquiries from the OWCP.**

FRAUDULENT ACTIVITIES:

Per 18 USC 1920, employees who file claims cannot:

- **knowingly and willfully falsify, conceal, or cover up a material fact; or**
- **make false, fictitious, or fraudulent statements, or use such statements from others knowingly.**

If so, they shall be guilty of perjury, and on conviction thereof shall be punished by a fine or by imprisonment for not more than 5 years, or both; but if the amount of the benefits falsely obtained does not exceed \$1,000, such person shall be punished by a fine under this title, or by imprisonment for not more than 1 year, or both."

If you are faced with a situation in which you have evidence that an employee is intentionally trying to misrepresent him or herself, contact your ARC WC Specialist and your senior management before discussing your concerns with the employee.

**Questions? Contact the ARC WC Specialist at (304) 480-8229
or email questions to WorkersComp@bpd.treas.gov**